Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Chua Teck

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL NO 05-29 OF 1989
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM AND GUNN CHIT TUAN SCJJ
26 SEPTEMBER 1989

Administrative Law — Habeas corpus — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Review of Advisory Board — Advisory Board recommending extension — Detention extended on same grounds as original order — Whether action of Deputy Minister valid — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3, 5 & 11

Preventive Detention — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Extension of detention on same grounds as original order — Whether detention lawful — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3, 5 & 11

In this case, the respondent had been detained pursuant to a detention order under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The Deputy Minister who signed the detention order had stated that he was satisfied that the respondent had associated himself in activities relating to or involving drug trafficking and that it was necessary that the respondent be detained. The Advisory Board later reviewed the respondent's case and submitted a report to the Deputy Minister, recommending an extension of the detention order. The Deputy Minister considered the reports and information relating to the conduct and activities of the respondent and being satisfied that it was necessary in the interest of public order for the detention order to be extended, extended it for a further period of two years 'on the same grounds as the order was originally made'. An application was made for habeas corpus and it was contended:

(a) the detention was not lawful because the various allegations of fact were stale and remote in point of time; and
(b) the Deputy Minister in making the detention order had contravened s 11(4) of the Dangerous Drugs (Special Preventive Measures) Act 1985.

The learned judge who heard the application concluded that since the report of the Advisory Board which contained a special recommendation for the extension of the respondent was put before the Deputy Minister, the Deputy Minister had considered extraneous matters which the law did not contemplate he should consider and this made his decision bad in law. He therefore ordered the release of the respondent. [See [1989] 3 MLJ 118.] The appellant appealed.

Held, allowing the appeal:

(1) It is established law that in a proceeding for habeas corpus, once it is shown that the order of detention was made in exercise of a valid legal power the burden is on the applicant to show that the power had been exercised mala fide or improperly.

(2) The question of staleness or remoteness of the allegations of facts goes to the question of sufficiency or relevancy of the facts, an inquiry outside the powers of the court.

(3) Before he makes an order for the extension of the detention order on the same ground as the original detention order, the Minister need only be satisfied on the same grounds on which the original detention order is made. It is open to the Minister to consider all the information or reports as are available to him. In this case he referred to the police file and the report of the Advisory Board.

(4) The Minister is not bound by the recommendation of the Advisory Board when it comes to the question of continuing the detention of a detainee under the Act. According to s 11(3) and (4) of the Act, although the Minister shall revoke the detention order where the Advisory Board has reported that in its opinion the detention should cease, where the Advisory Board has reported that in its opinion the detention should continue the Minister still has the discretion whether or not to continue the detention.

(5) So long as the Minister says that he is satisfied after considering all the information available to him that the detention order should be extended on the same grounds on which the order was originally made, it is not for the court to question how or why he became so satisfied.

Case referred to
1 *Re Tan Boon Liat* [1977] 2 MLJ 108 (refd)

Legislation referred to
Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3, 5, 11

Appeal from: Criminal Application No 54-1 of 1989 (High Court, Johore Bahru)

Abu Samah bin Nordin (Deputy Public Prosecutor) for the appellants.
Teh Poh Teik (*Gooi Hock Seng* and *M Athimulam* with him) for the respondent.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): The respondent, Chua Teck, was arrested by the police under s 3 of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') on 6 February 1986 and pursuant to a detention order under s 6(1) of the Act, he was then sent to the Pusat Pemulihan Akhlak, Muar, Johor for detention. The detention order dated 2 April 1986 signed by the Deputy Minister of Home Affairs, Malaysia took effect from 6 April 1986 for a period of two years.

The Advisory Board reviewed the respondent's case on 30 December 1987 and thereafter submitted its report to the Deputy Minister.

On 5 April 1988, the date when the detention order was due to expire, the respondent was served with an order extending his detention for a further period of two years commencing 5 April 1988. The extension detention order was signed by the Deputy Minister of Home Affairs on 4 April 1988. The extension detention order (p 23 of the appeal record) is headed as follows:

Perlanjutan Perintah Tahanan

(Seksyen 11A(1) (a) (aa))

Section 11A of the Act confers power on the Minister and, by virtue of art 43A of the Constitution, the Deputy

Minister, at any time before the expiration of the duration of a detention order under s 6(1) of the Act to direct that the duration of the order be extended for a period not exceeding two years. That section also provides that when the Minister directs the extension he shall also set out in the direction the grounds for the extension; and the grounds may either be the grounds as set out in para (aa) or in para (bb) or in para (cc) of s 11A(1) of the Act. In the case of the respondent here, it is expressly stated in the extension detention order that the grounds for the extension is as set out in para (aa), ie:

> the same as the grounds on which the order was originally made.

The detention order signed by the Deputy Minister on 2 April 1986 was made under s 6(1) of the Act where the Deputy Minister was satisfied that the respondent had associated himself in activities relating to or involving drug trafficking and that it was necessary that the respondent be detained. This the Deputy Minister (who has since left the government) clearly expressed in para 3 of his affidavit, affirmed on 12 September 1988 as follows:

> 3 From the reports and information relating to the conduct and activities of the applicant I received from the police and the report of the inquiry officer pursuant to s 5(2) of the Act, I was satisfied that the applicant had associated himself in activities relating to or involving in the trafficking of dangerous drugs and that it was necessary that the applicant be detained. Accordingly I made an order directing that he be detained for a period of two years with effect from 6 April 1986. A copy of the said detention order is annexed herewith and marked as 'RSA 1'.

The grounds on which the new Deputy Minister made the extension detention order are as stated in para 4 of his affidavit affirmed on 17 September 1988:

> 4 On 4 April 1988 from the reports and information relating to the conduct and activities of the applicant, I was satisfied that the applicant had associated himself in activities relating to or involving the trafficking in dangerous drugs and that it was necessary in the interest of public order that the detention order made against the applicant be extended for a further period of two years with effect from 5 April 1988 on the same grounds on which the order was originally made. Accordingly, in exercise of the powers conferred by s 11A of the Act, I made an order directing that the applicant be detained for a further period of two years immediately upon the expiration of the current order at Pusat Pemulihan Akhlak, Muar, Johore ...

It is clear that the extension detention order was made on the same grounds on which the detention order was originally made.

Before the learned judge of the High Court as well as before us only two basic grounds to impugn the legality of the detention were canvassed. They were that:

(a) the detention was not lawful because the various allegations of fact were stale and remote in point of time; and

(b) the Deputy Minister in making the detention order has contravened s 11(4) of the Dangerous Drugs (Special Preventive Measures) Act 1985.

It is an established law that in a proceeding for habeas corpus once it is shown that the order of detention was made in exercise of a valid legal power the burden is cast on the applicant to show that the power had been exercised mala fide or improperly. We are not to assume that there is an abuse of executive power every time an order detaining a person is made.

The first ground advanced on behalf of the respondent was answered properly and correctly by the learned judge at p 23 of his grounds of judgment. The question of staleness or remoteness of the allegations of fact goes to the question of sufficiency or relevancy of the facts, an inquiry outside the powers of the court. There is hardly any need to refer to any authority for this.

It is the second ground which is more crucial in this appeal. The learned judge concluded that since the report of the Advisory Board which contained a specific recommendation for further detention of the respondent was put before the Deputy Minister, the Deputy Minister had considered extraneous matters which the law did not contemplate he should consider and this made the decision of the Deputy Minister bad in law. The learned judge also construed that there was, as a result, evidence of non-compliance with the law affecting personal liberty and, citing *Re Tan Boon Liat*,[1] ordered the release of the respondent.

We think that the conclusion of the learned judge on the second ground was misconceived. We say so for the following reasons. In the affidavit of the Deputy Minister who issued the extension detention order, he stated that before making the order he considered 'reports and information relating to the conduct and activities' of the respondent as a result of which he was satisfied that it was necessary in the interest of public order for the detention order to be extended for a further period of two years 'on the same grounds on which the order was originally made'.

In the affidavit of Abdul Rahim bin Hashim, the assistant secretary attached to the Ministry of Home Affairs, he stated that on 4 April 1988 he handed to the Deputy Minister the case file relating to the respondent and also the report of the Advisory Board. The chairman of the Advisory Board at the relevant time also swore an affidavit and stated that the Advisory Board reviewed the respondent's case on 30 December 1987 and on the same day also heard the respondent's representation and thereupon prepared a written report under s 11 of the Act. The report of the Advisory Board was handed to the Deputy Minister on 9 January 1988. In its report the Advisory

Board gave an opinion that the detention of the respondent should be extended for a further period of two years.

Section 11 of the Act deals with the powers of review by the Advisory Board. Section 11(3) and (4) of the Act read as follows:

> (3) Where the Advisory Board has reported that in its opinion the detention or restriction should cease, the Minister shall revoke the detention order or restriction order.
> (4) Where the Advisory Board has reported that in its opinion the detention or restriction should continue, the Minister may continue the detention or restriction of the person concerned.

The learned judge thought that since the Advisory Board had exceeded its powers under s 11(4) by recommending an *extension* of the detention order the exercise of discretion by the Minister was tainted by that recommendation. Counsel for the respondent used the word 'impurity' to describe the recommendation of the Advisory Board and that the recommendation had prejudiced and impaired the decision of the Deputy Minister.

We are of the view that this is an incorrect approach to the interpretation of the power of the Minister under s 11A of the Act. Before he makes an order for the extension of the detention order on the same grounds as the original detention order (as provided in para (aa) of s 11A(1), the Minister need only be satisfied on the same grounds on which the original detention order was made.

It is open to the Minister to consider all information or reports as are available to him. In this case he referred to the police case file and also the report of the Advisory Board. No doubt the report of the Advisory Board made a recommendation which it had no business to make but that should not impair the decision of the Minister. In any case the Minister is not bound by the recommendation of the Advisory Board when it comes to the question of continuing the detention of a detainee under the Act. According to s 11(3) and (4) of the Act, although the Minister *shall* revoke the detention order where the Advisory Board has reported that in its opinion the detention should cease, where the Advisory Board has reported that in its opinion the detention should continue, the Minister still has the discretion whether or not to continue the detention.

It was also argued that in this case the Deputy Minister in his affidavit has not categorically denied that he was influenced or prejudiced by the recommendation of the Advisory Board. There is no necessity for him to do so. In our view so long as he says that he is satisfied after considering all the information available to him that the detention order should be extended on the same grounds on which the order was originally made it is not for the court to question how or why he became so satisfied. There is no non-compliance of the law as held by the learned judge.

We accordingly allow the appeal and set aside the order of the learned judge.

Appeal allowed.

Solicitors: *Abdul Raman Saad & Associates.*

Reported by *Prof Ahmad Ibrahim*

Raja Arshad bin Raja Tun Uda & Anor v Director-General of Inland Revenue

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 488 OF 1988
HASHIM YEOP A SANI CJ (MALAYA) HARUN HASHIM AND GUNN CHIT TUAN SCJJ
26 SEPTEMBER 1989

Companies and Corporations — Receivers and managers — Sale of landed property — Liability for real property gains tax — Priority — Companies Act 1965, ss 183(3), 191(2) & 292(1) — Real Property Gains Tax Act 1976, ss 2, 21A & 21B

In this case, the appellants had been appointed receivers and managers of a company which was indebted to a bank. The appellants' predecessors as receivers and managers had sold the only asset of a company, a landed property. The total purchase price had been paid to the receivers. The respondents, the Director-General of Inland Revenue, claimed payment of real property gains tax. The appellants applied to the High Court for directions and the learned judge of the High Court held that the respondents were entitled to the amount claimed. The appellants appealed.

Held, dismissing the appeal:

The purchaser of the property in this case who was the acquirer under s 2 of the Real Property Gains Tax Act1976 was statutorily bound to retain the sum payable by the company as real property gains tax until the acquirer receives the certificate of clearance under the Act and as the acquirer had not complied with what it was statutorily bound to do under the Act and had instead passed the whole amount of the purchase price to the receivers, the receivers had received a sum part of which they ought not to have received. The respondent was entitled to the sum being the amount of tax payable on the disposal of the land property. As far as the tax is concerned, the question of priority does not arise.

Case referred to

1 *Re Golden Palace Musical Hall Sdn Bhd* [1988] 2 MLJ 634 (distd)

Legislation referred to

Companies Act 1965 s 183(3), 191(2), 292(1)
Real Property Gains Tax Act 1976 ss 2, 21A, 21B

Appeal from: Originating Summons No D2-31-174-88 (High Court, Kuala Lumpur)

Ramesh Sanghvi for the appellants.
Balia Yusof bin Hj Wahi (Senior Federal Counsel) for the respondents.

Cur Adv Vult